

STATE OF MICHIGAN
IN THE SUPREME COURT

**Appeal from the Michigan Court of Appeals
(Before Owens, P.J., and Talbot and Meter, JJ.)**

HIGHLAND-HOWELL DEVELOPMENT
CO. , L.L.C.,

Plaintiff-Appellee,

Docket No. 122843

vs.

TOWNSHIP OF MARION,

Defendant-Appellant.

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**APPELLANT TOWNSHIP OF MARION'S
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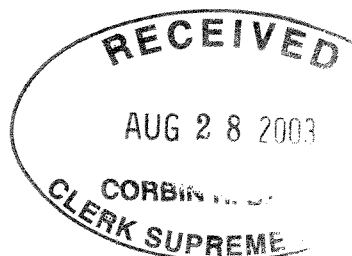


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JURISDICTIONAL STATEMENT

This Court granted Defendant-Appellant's application for leave to appeal in an Order entered on July 3, 2003. Jurisdiction over the case became vested in this Court on that date, pursuant to MCR 7.302(f)(3).

STATEMENT OF QUESTION INVOLVED

Whether the Court of Appeals misapplied the decisional law of this Court in ruling that Plaintiff-Appellee's "contractual damages" claim was not within the exclusive jurisdiction of the Michigan Tax Tribunal where this claim clearly alleged damages resulting from Defendant-Appellant's creation and implementation of a special assessment sewer district?

Defendant-Appellant Township of Marion submits that the answer is "Yes."

STATEMENT OF FACTS

Plaintiff-Appellee Highland-Howell Development Co., LLC (hereinafter “Highland-Howell”) filed its initial one-count Complaint in the Livingston County Circuit Court on August 18, 1998 (Appellant’s Appendix, pp. 14a-19a). At that time, Highland-Howell’s Petition to Contest Special Assessment, which had been filed on July 21, 1998 (Appellant’s Appendix, pp. 10a-13a), was pending before the Michigan Tax Tribunal.

In the Tax Tribunal proceeding, which is still pending today, Highland-Howell alleged that the special assessment imposed on its property by Defendant-Appellant Township of Marion (hereinafter “the Township”) was unlawful because it violated applicable statutes and because the changes made by the Township in the proposed sewer improvements “substantially reduce the benefits conferred upon Petitioner’s property...” (Appellant’s Appendix, pp. 11a-12a, ¶¶ 7-8). Paragraph 5 of Highland-Howell’s Tax Tribunal Petition alleged that “Respondent’s officials expressly represented to Petitioner that the sewer line would be installed on Petitioner’s property, and Respondent knew that Petitioner relied on the benefit which would be conferred upon Petitioner’s property by the sewer line” (Appellant’s Appendix, p. 11a, ¶5).

Highland-Howell’s initial Circuit Court Complaint, which was filed one month following the filing of its Tax Tribunal Petition, contained allegations that closely paralleled those set forth in the Petition. As this Court can plainly see, the gravamen of this Complaint was that the Township’s actions surrounding the creation and implementation of the special assessment sewer districts were unlawful, thus entitling Highland-Howell to money damages and injunctive relief (Appellant’s Appendix, pp. 14a-19a). The sole allegation in this Complaint dealing with the Township’s alleged representations as to the installation of a sewer line, found in Paragraph 15 thereof, is made in the context of the Township having designated the location of the sewer line

in conjunction with its approval of the special assessment sewer district project (Appellant's Appendix, pp. 14a-19a).

The Township's motion for summary disposition, filed on January 5, 2000, sought dismissal of Highland-Howell's Complaint under MCR 2.116(C)(4) on the ground that the claims asserted therein were within the exclusive jurisdiction of the Michigan Tax Tribunal. In response to this motion, Highland-Howell filed its First Amended Complaint (Appellant's Appendix, pp. 20a-25a) on January 26, 2000, not to assert any **new** claims, but merely to **clarify** its claims in the original Complaint (Highland-Howell's Brief on Appeal to the Court of Appeals, p. 5). Unlike the initial Complaint, however, the First Amended Complaint contained two counts: "Contractual Damages" and "Injunctive Relief."

In this transparent attempt to side-step the Township's summary disposition motion, Highland-Howell used "creative pleading" to adorn its challenge to the validity of its special assessment with claims of "breached promises" (Appellant's Appendix, pp. 20a-25a, ¶¶7-13). A careful comparison of the allegations in this amended pleading, those in the initial Complaint and those in the Tax Tribunal Petition reveals, however, that the "breached promises" referred to in the First Amended Complaint are identical to the "express representations" alleged in the Tax Tribunal Petition (Appellant's Appendix, pp. 10a-13a, ¶¶5-7) and the "representation" referred to in the initial Complaint (Appellant's Appendix, pp. 14a-19a, ¶15). In each instance, the substance of Highland-Howell's allegations is that the Township, by removing the sewer line across Highland-Howell's property, reduced the benefit conferred on this property by the sewer improvements that are the subject of Highland-Howell's special assessment.

Indeed, a close reading of Count I of Highland-Howell's First Amended Complaint¹ reveals that, notwithstanding its "Contractual Damages" label, it remains a claim that the Township's actions attending the creation and implementation of the special assessment sewer districts were unlawful. At the core of Highland-Howell's allegations relative to the Township's "promises concerning the installation of the east-west sewer line" (Appellant's Appendix, p. 22a, ¶10) are the allegations in the two preceding paragraphs, which state as follows:

8. Defendant adopted a sanitary sewer district which included Plaintiff's property. Defendant adopted plans for the sewer improvements which plans included Plaintiff's east-west sewer line.
9. Defendant adopted a special assessment roll which allocated a disproportionate share of the cost of the sewer improvements to Plaintiff's property.

Appellant's Appendix, pp. 21a-22a.

Thus, as "clarified" by its amended pleading, Highland-Howell's claim is that it has been damaged by the Township's decisions relating to the creation and implementation of the special assessment sewer districts in issue – a claim falling squarely within the exclusive jurisdiction of the Michigan Tax Tribunal.²

¹ Highland-Howell has abandoned its challenge to the Circuit Court's dismissal of Count II of its First Amended Complaint (see fn. 2 to Court of Appeals Opinion, Appellant's Appendix, p. 31a).

² In July of 2003, the parties hereto commenced the hearing on Highland-Howell's Tax Tribunal Petition before Tax Tribunal Judge Thomas Halik. Due to the fact that this hearing began subsequent to the briefing and decision of the instant case in the Court of Appeals, the Township did not have an opportunity to advise that Court of the arguments asserted by Highland-Howell in the Tax Tribunal concerning the alleged "breached promises" related to the placement of sewer lines. Although the transcript of the Tax Tribunal proceeding is not a part of the record in the instant case, the Township believes it is critical to a complete understanding of the parallel proceedings in the Tax Tribunal and the Livingston County Circuit Court that this Court be apprised of the arguments asserted by Highland-Howell in the Tax Tribunal at the July 2003 hearing therein. Specifically, Highland-Howell argued that the elimination of the east-west sewer line across its property – the same sewer line involved in the instant case – absent a reduction in its special assessment violated the statute governing how a township can impose a special assessment. (Appellant's Appendix, pp. 35a to 67a [Petitioner Highland-Howell's Trial Brief in Michigan Tax Tribunal, of which this Court can take judicial notice pursuant to MRE 201(b)(2)]. Although the arguments and evidence offered by Highland-Howell in the Tax Tribunal on this subject were presented in the context of its response to the Township's assertion that the Tax Tribunal lacks jurisdiction over the matter on timeliness grounds (i.e., Highland-Howell's failure to file its appeal within 30 days of the Township's confirmation of the special assessment roll), and

In an unpublished decision reached without the benefit of oral argument, the Court of Appeals reversed the trial court's order granting the Township's motion for summary disposition and remanded the case to the trial court for further proceedings (Appellant's Appendix, pp. 31a-34a). In its decision, the Court of Appeals misapprehended and misapplied the precedents of this Court, and simply ignored additional authorities that support the arguments advanced by the Township. The result is a decision that, if not reversed, will exalt the form of Highland-Howell's "clarifying" pleading over the substance of the claim asserted therein, and will thus work a material injustice upon the Township by forcing it to litigate in the Circuit Court a claim this is clearly within the exclusive jurisdiction of the Michigan Tax Tribunal.

fn continued:

not in the context of an affirmative claim for relief as presented in the Circuit Court below, the fact remains that Highland-Howell has seen fit to litigate the issue of the lawfulness of the Township's removal of the subject east-west sewer line in the Tax Tribunal proceeding. Under these circumstances, Highland-Howell's argument that this issue must be litigated in the Circuit Court is disingenuous and belied by its own course of conduct.

ARGUMENT

THROUGH ITS MISAPPREHENSION AND MISAPPLICATION OF THIS COURT'S PRECEDENTS, THE COURT OF APPEALS BELOW ERRONEOUSLY CONCLUDED THAT HIGHLAND-HOWELL'S CLAIM FOR "CONTRACTUAL DAMAGES" IN COUNT I OF THE FIRST AMENDED COMPLAINT FALLS OUTSIDE THE EXCLUSIVE JURISDICTION OF THE MICHIGAN TAX TRIBUNAL.

1. Standard of Review.

The question of whether a court has subject matter jurisdiction over a particular claim is one of law that appellate courts review *de novo*. Specht v Citizens Ins Co of America, 234 Mich App 292; 593 NW2d 670 (1999). In deciding the jurisdictional issue presented in this case, the courts below were called upon to interpret the provisions of the Tax Tribunal Act, MCL 205.701 *et seq.*; review of questions of statutory interpretation is also *de novo*. Smith v Globe Life Ins Co, 460 Mich 446; 597 NW2d 28 (1999).

2. The Tax Tribunal has broad statutory powers to review final decisions relating to special assessments.

Section 31 of the Tax Tribunal Act, MCL 205.731, provides that the Tribunal has **exclusive** and original jurisdiction over proceedings for direct review of a final decision of an agency (e.g., a township) "relating to...special assessments...under property tax laws." MCL 205.731(a).³ The Tribunal's powers include, without limitation, affirming, reversing, modifying or remanding an agency's final decision; ordering the payment or refund of taxes; and granting other relief or issuing writs, orders, or directives deemed necessary or appropriate in the process of disposing of matters properly before it. MCL 205.732. While the jurisdiction and powers of

³ "[S]pecial assessments levied against property owners for public improvements to realty which especially benefit their property are special assessments under the property tax laws for the purposes of the Tax Tribunal Act." Wikman v City of Novi, 413 Mich 617, 636; 322 NW2d 103 (1982).

the circuit courts are likewise broad, they lack jurisdiction when preempted by Michigan law. Wikman v City of Novi, 413 Mich 617, 644-645; 322 NW2d 103 (1982).

In matters of taxation, circuit courts have jurisdiction to rule on certain constitutional issues pertaining to the validity of tax laws. In addition, they are empowered to grant equitable relief to enforce Tax Tribunal decisions. Johnston v City of Livonia, 177 Mich App 200; 441 NW2d 41 (1989); Kostyu v Dept of Treasury, 170 Mich App 123; 427 NW2d 566 (1988). In contrast, the broad statutory powers of the Tax Tribunal are defined by the Tax Tribunal Act; as a quasi-judicial agency, the Tribunal's primary function is to find facts and review agency decisions in a prompt, fair and efficient manner consistent with its expertise, which "relates primarily to questions concerning the "factual underpinnings" of taxes." Johnston v City of Livonia, *supra*, 177 Mich App at 205.

3. Jurisdiction is determined by the gravamen of the claim, not by how skillfully the plaintiff camouflages it.

In Colonial Village Townhouse Cooperative v City of Riverview, 142 Mich App 474; 370 NW2d 25 (1985), the plaintiff filed a circuit court complaint for damages based upon the pleaded theory that the City's failure to provide services for which plaintiff was taxed constituted the breach of a quasi-contractual obligation, and that jurisdiction was proper in circuit court. Affirming the trial court's grant of the City's motion for summary judgment, the Court of Appeals first addressed the broad scope of the Tax Tribunal's exclusive jurisdiction, and then made the following observations which are particularly germane to the issue before this Court:

Logic and case law compel us to rule that exclusive jurisdiction lies with the Tax Tribunal in the instant dispute. The question of whether plaintiff's cause of action is basically quasi-contractual or not depends upon whether the city has been "unjustly" enriched. And whether the enrichment was "unjust" depends upon whether the assessment of plaintiff's property made

pursuant to MCL 123.261; MSA 5.2681 was fair and equitable. As noted earlier, the Tax Tribunal has exclusive jurisdiction over orders “relating to assessment...under property tax laws.” Thus, whether or not a city may assess an ad valorem garbage tax and not collect the garbage from certain described property owners is a question over which the Tax Tribunal is given exclusive jurisdiction.

In Johnson v Michigan, 113 Mich App 447; 317 NW2d 652 (1982), this Court held that the Tax Tribunal had jurisdiction over plaintiff’s claim that the tax practices of the City of Detroit and Wayne County resulted in “unequal and inequitable assessments and collection of property taxes.” The Court reasoned that the Tribunal had jurisdiction because the “general thrust of the complaint” was an attack on the validity of the property tax assessment. 113 Mich App 459. Similarly, in Turner v Lansing Twp, 108 Mich App 103; 310 NW2d 287 (1981), lv den 413 Mich 871 (1982), the Court held that the doctrine of constructive fraud, an equitable doctrine, could be pleaded before the tribunal. See also Grosse Ile Committee for Legal Taxation v Grosse Ile Twp, 129 Mich App 477; 342 NW2d 582 (1983), where the Court held that where individual taxpayers contest the legality of the tax bills they receive, the Legislature intended such matters to be heard in the Tax Tribunal.

Thus, the jurisdictional claim in this case should be determined not be how the plaintiff phrases its complaint, but by the relief sought and the underlying basis of the action. No matter how skillfully plaintiff camouflages it, the underlying basis of plaintiff’s claim is that a city may not collect a tax to provide a service and then refuse to provide that service to certain individuals. As such, the claim seeks to challenge the validity of an assessment under the property tax laws, MCL 123.261; MSA 5.2681, an area over which the tax Tribunal is given exclusive jurisdiction.

142 Mich App at 477-478.

In the instant case, Highland-Howell’s label of “contractual damages” cannot camouflage the essence of its claim, which is that the Township’s elimination of the east-west sewer line across its property without a corresponding reduction of its special assessment violated the statute governing the lawful imposition of special assessments. Simply stated, Highland-

Howell's claim is that the Township cannot validly levy a special assessment based on the presence of the subject sewer line, later eliminate the line but then refuse to lower the assessment. This is the claim that "clarified" the one asserted in Highland-Howell's initial Complaint, and is the same claim asserted by Highland-Howell in a defensive posture in the pending Tax Tribunal proceeding relative to the Township's argument as to the timeliness of Highland-Howell's Tribunal appeal. Stripped of its "creative pleading" gloss, this "contractual damages" claim is nothing more than a challenge to the validity of the procedures utilized by the Township to arrive at Highland-Howell's special assessment, and as such the exclusive jurisdiction over this claim lies in the Tax Tribunal.

In its decision below, the Court of Appeals began by correctly noting that Highland-Howell's "contractual damages" claim "alleged that the promise was made as part of defendant's creation of a special assessment district" (Appellant's Appendix, p. 31a). The Township submits that this acknowledgement of the inextricable intertwining of the alleged promise of an east-west sewer line across the property and the inclusion of this line in the Township's special assessment sewer project should have led the Court of Appeals to conclude, under the precedents of this Court and of cases such as Colonial Village Townhouse Cooperative, *supra*, that Highland-Howell's claim was outside the jurisdiction of the circuit court. Instead, the Court of Appeals embarked upon an analysis that misapprehended and misapplied the guiding principles established by this Court, and that simply ignored other precedents that have direct application to the issue presented.

4. **Where the gravamen of a claim “relates to” a special assessment, exclusive jurisdiction over that claim lies in the Tax Tribunal.**

In Wikman v City of Novi, 413 Mich 617; 322 NW2d 103 (1982), this Court squarely held that the Tax Tribunal Act “grants the Tax Tribunal exclusive jurisdiction over this proceeding seeking direct review of the governmental unit’s decision concerning a special assessment for a public improvement.” 413 Mich at 626. Moreover, this Court made it clear in Wikman that neither the manner in which a claim is couched nor the nature of the relief sought (in that case injunctive relief) could divest the Tax Tribunal of its exclusive jurisdiction where the gravamen of the complaint relates to a challenge to the validity of a special assessment. 413 Mich at 647.

At issue in Wikman was a claim that special assessments for road paving were levied in an arbitrary and inequitable manner. The plaintiffs’ circuit court action sought to enjoin collection of the special assessments, to determine that their properties were not especially benefited, to adjudge the assessments null and void, and to grant other equitable relief. On appeal from the circuit court’s exercise of jurisdiction and granting of relief, the Court of Appeals reversed and remanded the case to the Tax Tribunal.

In addressing the issue of circuit court versus Tax Tribunal jurisdiction, this Court in Wikman focused on the gravamen of the plaintiff’s claim, i.e., that their assessments were not made according to the benefits received as required by law, and discounted the fact that plaintiffs had couched this claim in constitutional terms in an attempt to bring it outside the scope of the Tribunal’s exclusive jurisdiction. 413 Mich at 647. After noting that the Tribunal is structured to provide it with the experience necessary to resolve the many issues presented to it and to

correct any errors in the agency's decision, this Court defined the scope of the Tribunal's jurisdiction as follows:

Since the issues raised by plaintiffs do not involve the validity of the tribunal's action or a statute, they do not remove this proceeding from the exclusive jurisdiction of the Tax Tribunal.

Wikman, supra at 647.

Thus, the rule of law laid down by this Court in Wikman is clear – except for claims involving the validity of the tribunal's actions or a statute, all claims “relating to...special assessments” are within the exclusive jurisdiction of the Tax Tribunal pursuant to MCL 205.731(a).⁴

Two years after deciding the Wikman case, this Court rendered its decision in Eyde v Charter Twp of Lansing, 420 Mich 287; 363 NW2d 277 (1984). In Eyde, this Court affirmed the dismissal of a circuit court action challenging the validity of special assessments, citing Wikman, supra as the controlling authority. 420 Mich at 292. It is noteworthy that in Eyde, the plaintiffs alleged that there were various defects in the procedures leading to their special assessment, just as Highland-Howell alleged in its First Amended Complaint that the Township adopted a sewer district the plans for which included an east-west sewer line across its property, specially assessed it for its share of the improvement costs and then removed the line from the plans, thereby causing it to lose the line's value (Appellant's Appendix, pp. 21a-22a).

The Eyde decision was ignored by the Court of Appeals below. Instead, the Court looked only to Wikman, supra and its companion case of Romulus City Treasurer v Wayne County Drain Comm'r, 413 Mich 728; 322 NW2d 152 (1982),⁵ which involved a claim of constructive

⁴ A final decision of an agency “relates to” a special assessment when it has a connection with, or reference to, the assessment. See Mutual Life Ins Co of New York v Ins Bureau, 155 Mich App 128, 132; 399 NW2d 466 (1986) and Shaw v Delta Air Lines, Inc, 463 US 85, 97-98; 77 LEd2d 490; 103 S. Ct. 2890 (1983).

⁵ Wikman and Romulus City Treasurer were both decided by this Court on July 2, 1982.

fraud regarding the collection and use of money for administrative expenses through special assessment procedures.

In ruling that the circuit court had jurisdiction over the claim asserted in Romulus City Treasurer, this Court distinguished the claim in Wikman that the assessments were not levied according to the benefits received. According to this Court, the claim in Romulus City Treasurer was properly brought in circuit court because matters within the Tribunal's jurisdiction do not include questions as to how funds collected may be expended. In short, this Court concluded that the expenditure of monies collected under the special assessment laws is not a matter within the Tax Tribunal's expertise of dealing with issues concerning whether a special assessment has been levied according to the benefits received. 413 Mich at 737-738.

Properly reconciled, Wikman and Romulus City Treasurer draw the boundary line of the Tax Tribunal's exclusive jurisdiction at the point where the gravamen of the claim asserted is unrelated to questions concerning the lawfulness of challenged special assessments. Thus, if a claimant is asserting that an agency's decision relating to a special assessment is violative of the procedural or substantive aspects of the special assessment laws, his or her claim can only be adjudicated in the Tax Tribunal.

In its decision below, the Court of Appeals misapprehended and misapplied the Wikman and Romulus City Treasurer holdings and, as a result, reached an erroneous conclusion. The Court of Appeals' analysis, which consisted of a mere paragraph, was as follows:

...count I did not challenge the special assessment, nor did it challenge the improvements that were actually made as part of that special assessment. Instead, count I alleged that defendant breached its promise to make an improvement that was not part of the final special assessment district. In other words, plaintiff sought damages for a breach of contract. As such, we believe that count I was more analogous to the constructive fraud claim in Romulus, than the direct challenge to the special assessment in

Wikman. As a result, count I did not raise legal issues falling within the Tax Tribunal's area of expertise. Accordingly, we conclude that the trial court erred in ruling that count I fell within the Tax Tribunal's exclusive jurisdiction...

Appellant's Appendix, p. 33a.

It is apparent from this analysis that the Court of Appeals took Highland-Howell's bait hook, line and sinker when it accepted the label of "contractual damages" attached to Count I and allowed its attention to be diverted from the gravamen of Highland-Howell's claim. When Count I of the First Amended Complaint is fairly and carefully read, what is gleaned is a claim that 1) the Township created a special assessment district for sanitary sewers that included in its plans an east-west sewer line across Highland-Howell's property; 2) the Township adopted a special assessment roll which allocated the costs of these improvements, including the cost of the east-west sewer line, to Highland-Howell's property; 3) the Township did not install the east-west sewer line across Highland-Howell's property as it had represented it would; 4) Highland-Howell, in reliance on the Township's representations about the east-west sewer line, did not object to its special assessment; and 5) Highland-Howell has suffered the loss of value of the subject sewer line across its property while still being assessed for its share of the cost thereof (Appellant's Appendix, pp. 20a-22a).

Had the Court of Appeals ignored the form and concentrated on the substance – the gravamen – of Count I of the First Amended Complaint, it would have plainly seen that, despite Highland-Howell's best efforts to camouflage the true nature of this claim in a "contractual damages" wrapper, what was really before it was a claim that the Township had wrongly eliminated the east-west sewer line from the plans for the sanitary sewer system to be constructed via special assessments upon benefited property owners, and that as a result Highland-Howell was being unlawfully specially assessed for its share of this sewer line. While

there are concededly additional components to Highland-Howell's prayer for relief beyond the lost value of the subject sewer line, there has never been an allegation or argument made in this case that the Tax Tribunal is without jurisdiction to address these damage claims. As this Court held in Wikman, supra:

The legal remedy available in this case is a proceeding before the Tax Tribunal. As indicated above, the tribunal has the jurisdiction and ability to resolve all the claims presented.

413 Mich at 648.

Moreover, the great irony of this case is that while Highland-Howell so vociferously argues that the Tax Tribunal lacks jurisdiction over the claim in Count I of the First Amended Complaint, the very substance of this claim has been presented to the Tax Tribunal for adjudication in Highland-Howell's pending special assessment appeal (Appellant's Appendix, pp. 35a-67a). The duplicity which characterizes Highland-Howell's actions and positions in this regard is quite remarkable, and this Court should not lose sight of the fact that Highland-Howell's words are wholly belied by its actions when it comes to taking a position on the scope of the Tax Tribunal's jurisdiction.

However couched, characterized or camouflaged, a claim that the Township included a special sewer line in plans for a special assessment sewer project, assessed property owners for the cost of the line, later removed the line but did not reduce the assessments, with the result being that the value of the line is lost, is clearly a claim within the Tax Tribunal's jurisdiction and expertise in dealing with issues concerning whether a special assessment has been levied according to the benefits received. Wikman, supra, 413 Mich at 737-738. Accordingly, the Court of Appeals erroneously held that this claim may be pursued in circuit court.

5. In contexts outside of the Tax Tribunal, Michigan courts have not hesitated to broadly interpret statutory grants of exclusive jurisdiction or to disregard the labels attached to a pleader's claims in determining where jurisdiction lies.

The appellate courts of this State have taken a consistent approach to interpreting the scope of statutory grants of exclusive jurisdiction to agencies and courts other than the circuit courts. In these cases, the focus has been on the nature and extent of the jurisdictional authority granted, and the outcome has hinged not on the label the pleader has put on the claim, but rather upon the claim's true nature – its gravamen.

In Manning v Amerman, 229 Mich App 608; 582 NW2d 539 (1998), lv den 459 Mich 948 (1999), the Court of Appeals was asked to determine whether trust beneficiaries' claims for tortious interference with a prospective advantage/expectancy/trust/contractual relations, intentional infliction of emotional distress, legal malpractice, breach of contract and unjust enrichment against the trustee and his attorney were within the exclusive jurisdiction of the probate court. In affirming the circuit court's dismissal of these claims on jurisdictional grounds, the Court in Manning evaluated the claims in light of the statutory grant of exclusive jurisdiction to the probate court over "matters relating to the settlement of the estate" and the determination of "any question arising in the administration or distribution of any trust..." MCL 700.21; 229 Mich App at 611-612. The Court's approach in Manning is instructive:

In determining jurisdiction, this Court will look beyond a plaintiff's choice of labels to the true nature of the plaintiff's claim. See Silverman v Univ of Michigan Bd of Regents, 445 Mich 209, 216, n7; 516 NW2d 54 (1994); In Re Mahoney Trust, 153 Mich App 670, 678; 396 NW2d 494 (1986). In this case, count III of plaintiff's complaint alleged that plaintiffs suffered emotional distress damages because of defendants' willful breaches of duty in the administration of the trust. Similarly, count IV of the complaint alleged that plaintiffs suffered emotional distress damages because of defendants' negligent acts and omissions with

respect to the same conduct. Finally, count V of the complaint alleged that defendant Amerman engaged in legal malpractice. Plaintiffs claimed that Amerman owed fiduciary duties to them on the basis of a statement he allegedly made to the probate court in which he purported to represent them with respect to the trust at issue.... Accordingly, it is clear from the face of the complaint that plaintiffs' emotional distress and malpractice claims arose in the administration of a trust. Therefore, solely on the basis of the plain language of §21 of the RPC, we conclude that these claims are within the exclusive jurisdiction of the probate court. See MCL 700.21(b); MSA 27.5021(b).

229 Mich at 613-614 (fn omitted).

Application of the Manning Court's evaluative approach to the instant case compels the conclusion that, notwithstanding its "contractual damages" label, Count I of Highland-Howell's First Amended Complaint is within the exclusive jurisdiction of the Tax Tribunal because the claim asserted therein relates to the Township's decisions concerning special assessments for sewer improvements. As in Manning, this conclusion is compelled by application of the plain language of the Tax Tribunal Act to the operative facts alleged in the complaint.

Recently, in Parkwood Limited Dividend Housing Ass'n v State Housing Development Authority, 468 Mich 763; 664 NW2d 185 (2003), this Court addressed the jurisdiction of the Court of Claims over a contractual claim for declaratory judgment against a state agency. In reversing the judgment of the Court of Appeals and concluding that the Court of Claims has exclusive jurisdiction over the claim, this Court first considered the "nature of the claim" and in so doing determined that it involved a complaint for declaratory relief only. Next, this Court considered whether the claim fell within the exclusive jurisdiction of the Court of Claims under MCL 600.6419(1)(a) to "hear and determine all claims and demands, liquidated and unliquidated, ex contractu and ex delicto, against the state and any of its departments, commissions, boards, institutions, arms, or agencies." Holding that the statute encompassed a

contract-based claim for declaratory relief, this Court specifically reaffirmed its statements in Silverman v Univ of Michigan Bd of Regents, 445 Mich 209; 516 NW2d 54 (1994) “recognizing that the nature of the claim, rather than how the plaintiff phrases the request for relief, controls how a court will characterize the claim.” 468 Mich at ____; 664 NW2d at 191, fn 8.

After Parkwood, it is beyond doubt that this Court will not allow “creative pleading” to camouflage the true nature of a claim when it is assessing whether that claim falls within the jurisdiction of the circuit courts or the exclusive jurisdiction of some other court or tribunal. In the instant case, application of this bedrock principle exposes the true nature – the gravamen – of Highland-Howell’s “contractual damages” claim as a claim relating to, and arising from, the Township’s decisions concerning special assessments for sewer improvements. Consequently, this Court must expose the error inherent in the Court of Appeals’ analysis below and confirm the propriety of the trial court’s order granting the Township’s motion for summary disposition under MCR 2.116(C)(4).

CONCLUSION AND RELIEF REQUESTED

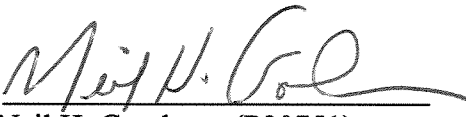
“A rose by any other name would smell as sweet.”

— William Shakespeare

The Court of Appeals erred as matter of law in deciding that the claim asserted in Count I of Highland-Howell’s First Amended Complaint fell outside the exclusive jurisdiction of the Michigan Tax Tribunal. The Township therefore prays for a reversal of the judgment of the Court of Appeals.

Respectfully submitted,

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